

## Brian S. Clary & Associates

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August 6, 2004

Certified Mail Return Receipt Requested  
No. 7003-3110-0003-0013-5580

Parvez Alam  
Leon County Administrator  
Leon County Courthouse  
301 S. Monroe Street  
Tallahassee, FL 32301

Re: Tom and Katherine Termotto, et al vs. Leon County, Florida

Dear Mr. Alam:

Mr. Tom and Katherine Termotto, who are residents of the Orchard Walk Subdivision, have retained my services in representing their legal rights with respect to protecting their health and safety from the Leon County Mosquito Control street-fogging program.

As you should know, the County's Mosquito Control street-fogging program uses a known toxic insecticide called ANVIL™, which contains a synthetic pyrethroid known as sumithrin. Studies have shown that pyrethroids such as sumithrin are nerve poisons that attack the sodium ion channels in nerve cell membranes. Laboratory

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Leon County Administrator

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tests show that rats that were fed high doses (1,000 milligrams per kilogram of body weight or mg/kg) of pyrethrins (natural versions of pyrethroids) showed liver damage. There is also evidence that pyrethroids can harm the thyroid and cause autoimmune diseases. It is also a contributing factor to the causation of brain, breast and prostate cancers. ANVIL™ also contains piperonyl butoxide as well as inert ingredients. Piperonyl butoxide has been classified by the Environmental Protection Agency as a possible human carcinogen. Manufacturers are not required to disclose the inert ingredients, although they may be toxic also. (See attached Exhibit A)

Mrs. Termotto's physician, Dr. Kirby Hotchner, sent two letters to you concerning her medical conditions (Letters dated July 26, 2004 and August 3, 2004 – See Exhibit B) that are greatly exacerbated by exposure to ANVIL™. In reviewing Mr. and Mrs. Termotto's letter to you of July 21, 2004, and subsequent correspondence, you were notified about this urgent matter - of the known health risks to Mrs. Termotto and other Leon County residents associated with ANVIL™ - and yet the County has chosen to continue to systemically disperse this toxic chemical upon its citizens without providing notice to them regarding the potential health hazards. However well intentioned the County may be with respect to protecting county residents from diseases transmitted by mosquitoes, the County is in fact causing greater health risks than the known diseases transmitted by mosquitoes.

Please be advised that Mr. Termotto has spent almost 10 years creating a highly sterile and allergy-free environment within his home in an effort to mitigate his wife's medical conditions. Your Anvil™ spraying gun on the back of the mosquito control truck completely compromises that purposefully created environment because of how far and wide this synthetic pyrethroid is disbursed, even as it ejects the chemical several homes down the street. Therefore, you and your staff know the County's recently adopted method of disbursement of ANVIL™ puts Mrs. Termotto at great risk, not only in the short term, but especially due to long-term and systematic exposure. Each successive exposure to this toxic chemical severely impacts Mrs. Termotto's health as well as other Leon county residents.

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Leon County Administrator

By letter dated August 2, 2004, you informed the Termotto's of the County's decision to have Mosquito Control begin a street-fogging program in the Orchard Walk Subdivision. Since 1996, it has been the practice of Mosquito Control to hand fog the property of any Orchard Walk Subdivision resident who requests it. In your letter, you made reference to a "most recent ballot" in which it is asserted that 31 of 35 households on Sumerlin Drive requested the County's Mosquito Control street-fogging program. I am in receipt of a copy of a petition bearing the signatures of 15 homeowners on Sumerlin Drive dated June 25, 2004, who were all opposed to street fogging on their street. In fact, according to the records of Leon County Mosquito Control produced to the Termotto's on June 25, 2004, only one household on Sumerlin Dr. has made a request for their property to be hand fogged since August 15, 2002. (See Exhibit C)

I have reviewed the Orchard Walk Homeowners' Association (OWHA) By-laws and determined that it does not have any authority to request mosquito control street fogging for the subdivision. In Article III Section 1, the by-laws limit the homeowners' association powers to "adopting and publishing rules and regulations governing the use of the 'Common Area and facilities'." Article II, Section 3 defines "'Common Area' to mean all property, if any, owned by the Association." The fact is there is no property owned by the OWHA within this subdivision. Therefore, it is my legal opinion that the OWHA has no authority to demand or request any County Mosquito Control street-fogging program for Orchard Walk Subdivision.

Mr. and Mrs. Termotto request that Leon County agree to the following measures with regard to the Leon County Mosquito Control street-fogging program:

- (1) Terminate the County's Mosquito Control street-fogging program;
- (2) Publish notice to county residents of the adverse health effects of exposure to ANVIL™;
- (3) Consult toxicologists and epidemiologists of the actual and potential health risks of systematic ANVIL™ exposure;
- (4) Commission an environmental impact study of the effects of ANVIL™ on fauna, flora as well as the water supply;

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(5) Conduct public hearings for the public to voice its concerns about the hazards and use of such a toxic chemical;

**Alternative Compromise:**

- (1) Immediately terminate the County's Mosquito Control street-fogging program for the Orchard Walk Subdivision;
- (2) Revert back to the 10-year precedent of yard fogging the property of only those homeowners who request it.
- (3) Any property owner who requests mosquito fogging of their property should first be provided with a copy of the Material Safety Data Sheet on any insecticide to be used by the County to fully disclose all of the health hazards and risks associated with the insecticide so that residents may make an informed decision as to whether or not they want a particular insecticide sprayed on their property.

I would appreciate your immediate attention and response to the Termotto's concerns and demands. If I do not receive a written response from you within ten (10) days of the receipt of this notice, we will be forced to seek all civil remedies available to the Termotto's and other Leon County residents including but not limited to actual and consequential damages arising out of the county's willful and reckless disregard for the health and safety of the Termotto's and other residents of Leon County, Florida.

Sincerely,

  
John H. Fairhart

cc: Tom and Katherine Termotto  
1306 Sumerlin Drive  
Tallahassee, FL 32317

Chairman Janie Sauls, Leon County Commissioner  
Commissioner Tony Grippa  
Commissioner Rudy Maloy  
Commissioner Bill Proctor

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Leon County Administrator

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Commissioner Bob Rackleff  
Commissioner Cliff Thael  
Commissioner Dan Winchester  
Herbert W. A. Thiele, Leon County Attorney  
Tony Park, Directory of Public Works  
W. Gene Baker, Director Leon County Mosquito Control  
Mike Rella, OSHA President

The Sierra Club  
Florida PIRG  
LEAF  
Florida Wildlife Federation  
Audubon Society of Florida